

REMARKS

This Response is submitted in response to the Office Action mailed on September 15, 2005. The Office Action is an election and restriction requirement. Applicants respectfully submit that the election of species requirement is improper and is an attempt by the Patent Office to unduly limit Applicants' claimed invention. Indeed, Applicants respectfully submit that it is not proper and does not comport with the MPEP. To this end, Applicants respectfully submit that it would not be an undue burden for the Patent Office to search the claimed invention without the election requirement. Therefore, this fact in and of itself, bodes for the withdrawal of the election of species requirement. Furthermore, the Patent Office itself states that all of the claims are generic, then why the election?

Regardless, Applicants, without disclaimer and merely to ensure that the Patent Office does not unduly narrow Applicants' claimed invention, have cancelled all of the claims except for Claim 9. Applicants therefore have effectively elected Group II (Claims 9 and 26). Further, Claim 9 has been amended to recite that the composition includes both yeast and carotenoid. Therefore, Applicants respectfully submit that this renders moot the election of species requirement. Because all of the species claims have been cancelled, the election of species requirement is no longer appropriate. Accordingly, Applicants do not make any such election.

Applicants note for the record that they are not disclaiming any of the claimed subject matter. For example, although Claim 26 has been cancelled, this claim depended on Claim 9, and stated that the pet food could be in a form selected from the group consisting of powdered, dried, wet, chilled, and shelf stable. Although this claim has been cancelled, Applicants intend for Claim 9 to not be limited to any specific form and in fact to include all of the forms set forth in Claim 26 as well as additional forms pursuant to the doctrine of claim differentiation. Furthermore, in view of the restriction requirement and election of species requirement, Applicants reserve the right to file one or more divisional applications directed to the non-elected claims.

Respectfully submitted,

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